IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1014 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH B BANDBAR

Versus

PRAVINKUMAR POPATLAL GANDHI

Appearance:

1. Criminal Appeal No. 1014 of 1988

Mr. Manish Upadhyaya for
MR PRANAV G DESAI for Petitioner No. 1
MR NS SHETH for Respondent No. 1-2
NOTICE SERVED for Respondent No. 1-3
(MR KG YAGNIK) for Respondent No. 3
Mr.I.M. Pandya, APP for Respondent No. 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/01/2003

ORAL JUDGEMENT

1. In this appeal under Section 378 of the Code of Criminal Procedure, the appellant, Food Inspector of Vadodara Municipal Corporation, has challenged judgment and order dated January 27, 1988 passed by the learned Judicial Magistrate, First Class, Vadodara, in Criminal Case No.5797 of 1983, by which, the respondents Nos. 1 to 3 came to be acquitted of the offences punishable under Section 2 read with Sections 7 and 16 of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The appellant, who was discharging his duties as Food Inspector within the municipal corporation limits of Vadodara Municipal Corporation, had inspected on June 9, 1983 at about 10.45 a.m. the shop of the respondents Nos. 1 to 3 and had collected ground-nut oil of 375 grams by paying the price of Rs.5.80 ps. The said sample of ground-nut oil was filled in three glass bottles in the presence of independent witness, namely, panch. One sample of the bottle was sent to the Public Analyst and the report of the Public Analyst indicated that the sample of ground-nut oil did not conform to the standard prescribed under the Act and the Prevention of the Food Adulteration Rules ('Rules' for short). The Food Inspector obtained sanction from the Competent Authority to launch prosecution against the respondents Nos. 1 to 3 and, after obtaining the sanction, a complaint came to be filed in the Court of the learned Judicial Magistrate, First Class, Vadodara, which came to be registered as Criminal Case No.5797 of 1983 for the offences as stated above.

3. The learned Judicial Magistrate, First Class, Vadodara, recorded the evidence of the appellant and framed the charge against the respondents Nos. 1 to 3 for the offences punishable under Sections 2, 7 and 16 of the Act. The learned Judicial Magistrate, First Class, Vadodara, on appreciation of oral and documentary evidence, acquitted the respondents Nos. 1 to 3 mainly on the ground that the prosecution had failed to prove that the sample of ground-nut oil was collected in clean and dry bottles.

4. Heard learned advocate, Mr.Manish Upadhyaya for Mr. Pranav Desai for the appellant, who has taken me through the entire record and proceedings produced at the trial.

5. It is settled legal principle that the burden

lies on the prosecution to prove beyond doubt that, as per the provisions of Rule 14 of the Rules, before collecting the samples in the bottles, the said bottles were to be cleaned and dried. As per the settled legal principle, if no evidence was led by the prosecution to prove that the adulterated sample was collected in clean and dry bottle, it would prove to be fatal to the prosecution. In the present case, having gone through the evidence adduced at the trial, the Food Inspector had not led any evidence to prove that, before collecting the samples in the bottles, the said bottles were cleaned and dried. Thus, in the present case, there was clear violation of the mandatory provision of Rule 14 of the Rules, and, on that ground alone, the order of acquittal deserves to be confirmed. The other grounds on which the order of acquittal is based do not require to be referred to in view of the fact that the mandatory provision of Rule 14 of the Rules was not complied with.

6. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. The muddamal be destroyed in terms of the directions contained in the impugned judgment.

(M.H.Kadri, J.)

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(swamy)